

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY JO HAZEN)	
Claimant)	
VS.)	
)	
RIVERSIDE HOSPITAL)	Docket No. 196,529
Respondent)	
AND)	
)	
PHICO INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the Award of Administrative Law Judge Jon L. Frobish dated March 2, 1998. Oral Argument was heard October 14, 1998.

APPEARANCES

Claimant appeared by her attorney, Boyd A. Byers of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Daniel L. Doyle of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the Award of the Administrative Law Judge sets out findings of fact and conclusions of law, and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant suffered accidental injury on September 9, 1994, while undergoing a pre-employment physical. Claimant later voluntarily terminated her employment with respondent, concluding that she would not be able to complete her probationary period. Having received permanent work restrictions, claimant failed to return to respondent to request an accommodation. Respondent's representative, Cheryl Dixon, testified that respondent regularly accommodated injured people, and did everything in its power to accommodate medical restrictions. After leaving respondent and undergoing conservative medical care, claimant obtained a job with SRS making \$14 an hour as a social worker. The work duties required with SRS are very similar to the work duties required with respondent. This indicates claimant would be capable of performing her former job with respondent, with or without accommodation.

When claimant was hired with respondent, she was hired as a part-time worker, but at times worked up to 40 hours per week in order to complete her training period as quickly as possible. Claimant hired on with SRS at 20 hours per week, but is making more per hour than she earned with respondent. It is noted no health care provider limited claimant's work to 20 hours a week, and the 20-hour limitation appears to be claimant's own choice.

In this instance, claimant has returned to work earning more per hour than she had with respondent at a job with tasks very similar to the job claimant was performing with respondent. The only reason claimant is not earning a comparable wage is due to her decision to self-limit her work week to 20 hours a week. This decision to self-limit her work week would be in violation of the principles announced in Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997). Because claimant failed to make a good faith effort to find appropriate employment, it is proper to impute a wage to claimant. The Appeals Board finds claimant capable of returning to work and engaging in work for wages equal to 90 percent or more of the average weekly wage claimant was earning at the time of the injury.

It further appears claimant failed to provide respondent the opportunity to accommodate her work restrictions when she voluntarily terminated her employment in November 1994. The Kansas Court of Appeals has held that the legislature does not intend for a worker to receive compensation where the worker is capable of earning nearly the same wage as his or her pre-injury wage, and unreasonably refuses to either attempt an offered job within his or her restrictions or fails to make a good faith effort to find appropriate employment. Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995); Lowmaster v. Modine Manufacturing Co., 25 Kan. App. 2d 215 (1998), ___ Kan. ___ (1998).

The Appeals Board, therefore, finds that the Award of the Administrative Law Judge, granting claimant a functional impairment only, is appropriate and is affirmed. As the only opinion regarding functional impairment is that of Lawrence R. Blaty, M.D., showing a 3 percent permanent partial impairment to the body as a whole, the Appeals Board adopts same, and affirms the Administrative Law Judge's Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated March 2, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Boyd A. Byers, Wichita, KS
Daniel L. Doyle, Overland Park, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director